

**CENTRAL PUGET SOUND  
GROWTH MANAGEMENT HEARINGS BOARD  
STATE OF WASHINGTON**

LIZ GIBA, DON BENNETT, ERIC	)	
DICKMAN, HEIDI R. JOHNSON,	)	<b>Case No. 06-3-0008</b>
MARTHA KOESTER, MAGGIE	)	
LARRICK, CHERISSE LUXA, SAVUN	)	<i>(Giba)</i>
NEANG, RUSS KAY, BARBARA PETERS	)	
and NORTH HIGHLINE	)	
UNINCORPORATED AREA COUNCIL	)	
	)	<b>ORDER OF DISMISSAL</b>
Petitioners,	)	
	)	
v.	)	
	)	
CITY OF BURIEN,	)	
	)	
Respondent.	)	
	)	

---

**I. BACKGROUND**

On February 21, 2006, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from Liz Giba, Don Bennett, Eric Dickman, Heidi R. Johnson, Martha Koester, Maggie Larrick, Cherrisse Luxa and Savun Neang (**Petitioners** or **Giba**). The matter was assigned Case No. 06-3-0008, and is hereafter referred to as *Giba, et al., v. City of Burien*. Board member Edward G. McGuire is the Presiding Officer (**PO**) for this matter. Petitioners challenge the City of Burien's (**Respondent** or the **City**) adoption of Ordinance No. 445, amending the City's Comprehensive Plan, the Plan's Future Land Use Map (FLUM) and Zoning Map. The basis for the challenge is noncompliance with various provisions of the Growth Management Act (**GMA or Act**).

On February 22, 2006, the Board issued a "Notice of Hearing" in the above-captioned case. The Order set a date for a prehearing conference (**PHC**) and established a tentative schedule for the case.

On March 21, 2006, the Board received a timely filed "Amended Petition for Review" (**Amended PFR**) from Petitioners. The Amended PFR added three Petitioners to the case [added to the caption *infra*] and amended the two stated issues from the 2/21/06 PFR.

On March 23, 2006, the Board conducted the PHC at the Financial Center, Room 2395, Seattle. Board member Edward G. McGuire, Presiding Officer (**PO**) in this matter,

conducted the conference. Board member Margaret A. Pageler also attended. Appearing for pro se Petitioners were: Liz Giba, Don Bennett, Eric Dickman, Heidi R. Johnson, Martha Koester, Maggie Larrick, Cherisse Luxa, and Russ Kay. Steve Cox appeared for Petitioners Savun Neang and Barbara Peters.<sup>1</sup> Michael R. Kenyon represented Respondent City of Burien. Justin Titus, Board extern from Seattle University School of Law, was also present.

At the PHC Petitioners clarified that their challenge to Ordinance No. 445 was directed at Section 2,<sup>2</sup> which delayed consideration of Plan and map amendments for a potential annexation area (**PAA**) until 2006. Also at the PHC, the City provided the Board and Petitioners with copies of Ordinance No. 448. Ordinance No. 448 explicitly repealed Section 2 of Ordinance No. 445. The Board took official notice of Ordinance No. 448 but agreed to allow Petitioners and the City time to discuss this latest development and potentially resolve their dispute.

On March 24, 2006 the Board issued its “Prehearing Order” (**PHO**) setting forth the final schedule and legal issues to be decided by the Board. The two legal issues were limited to challenges to Section 2 of Ordinance No. 445, as clarified by Petitioners.

On March 30, 2006, the Board received “Respondent’s Index to Record” (**Index**).

On March 31, 2006, the Board received an unsolicited “Petitioners’ Motion to Amend Petition for Review” (**2<sup>nd</sup> Amended PFR**). This proposal added two additional issues and ignored the acknowledged limitation of the challenge to Section 2 of Ordinance No. 445.

On April 14, 2006, the Board received “Burien’s Motion to Dismiss Amended Petition for Review” (**Burien Motion – Dismiss**).

On the same day, the Board received a new PFR from Petitioners challenging the City of Burien’s adoption of Ordinance No. 448 – the Ordinance repealing the challenged action in the present matter.

---

<sup>1</sup> The eleven Petitioners were given until **March 27, 2006** to file a notice with the Board indicating two or three of the present Petitioners that would be a coordination contact and arguing on behalf of the Petitioners. On March 27, 2006, the Board received “Petitioners’ Notice of Designee” indicating that Liz Giba will serve as the Petitioners contact and argue on behalf of Petitioners.

<sup>2</sup> Section 2 of Ordinance No. 445 provides:

The City Council will consider and may take action on the Phase II amendments, which include policies and a map designating a Potential Annexation Area in 2006. Any further action by the City Council with regard to such amendments shall be considered a part of the City’s 2005 amendments to the Comprehensive Plan.

## **II. DISCUSSION**

The City's motion asks the Board to dismiss the *Giba* PFR on the grounds that the challenge is moot, in light of the City's adoption of Ordinance No. 448. Burien Motion – Dismiss, at 1-5. Without waiting for a response to the City's motion, the Board agrees. First, the Petitioners' 2<sup>nd</sup> Amended PFR was filed more than 30 days after the initial PFR and as such the PFR is no longer amended as a matter of right. *See* WAC 242-02-260(1) and (2). Further, the Board **denies** the motion to amend the PFR since it adds issues not included in the original PFR, discussed at the PHC or contained in the PHO. Second, as the City contends, the challenged portion of Ordinance No. 445 – Section 2 – has been repealed by the City when it adopted Ordinance No. 448. At the PHC, Petitioners acknowledged this action and in the latest PFR they likewise acknowledge that Ordinance No. 448 repeals Section 2 of Ordinance No. 445. Yet Petitioners have not specifically withdrawn their challenge. Consequently, the Board **dismisses** the matter of *Giba, et al., v. City of Burien* as moot, since the relevant provision of the challenged ordinance has been repealed. With the repeal of Section 2, the Board no longer has subject matter jurisdiction. The Board also notes that by the repeal of Section 2 the City itself has provided the relief requested by Petitioners.

## **III. ORDER**

Based upon review of the Petitions for Review, the motions and materials submitted by the parties, the Act, Board rules, and prior decisions of this Board and other Growth Management Hearings Boards, the Board enters the following ORDER:

- The City's motion to dismiss is **granted**.
- The City's adoption of Ordinance No. 448, repealing Section 2 of Ordinance No. 445 renders this PFR moot. Therefore, the matter of *Giba, et al., v. City of Burien*, CPSGMHB Case No. 06-3-0008 is **dismissed**.
- All further scheduled hearings on this matter are **cancelled** and the case is **closed**.

So ORDERED this 17<sup>th</sup> day of April, 2006.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

---

Bruce C. Laing, FAICP  
Board Member

---

Edward G. McGuire, AICP  
Board Member

---

Margaret A. Pageler  
Board Member

Note: This Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.